

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)



WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

July 5, 1985

TO COUNTY ASSESSORS,
COUNTY COUNSELS AND
OTHER INTERESTED PARTIES:

No. 85/76

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

RULE 463.5 - Date of Completion of New Construction

PUBLIC HEARING: AUGUST 19, 1985

The public hearing date for Rule 463.5, Date of Completion of New Construction, is changed from July 30, 1985 to August 19, 1985. There is no change in the proposed text of the rule.

A copy of the Notice of Proposed Regulatory Action for the August 19, 1985 hearing is attached.

Sincerely,

A handwritten signature in cursive script that reads "Douglas D. Bell".

Douglas D. Bell
Executive Secretary

DDB:jt

Attachment



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RULE 463.5 - Date of Completion of New Construction

PUBLIC HEARING: August 19, 1985

NOTICE IS HEREBY GIVEN that the State Board of Equalization, pursuant to the authority vested by Section 15606 of the Government Code and Section 75.12, subdivision (c), of the Revenue and Taxation Code, and to implement, interpret, or make specific Section 75.12 of the Revenue and Taxation Code, proposes to adopt Rule 463.5 in Title 18 of the California Administrative Code, relating to property tax.

PUBLIC NOTICE: Notice is further given that a public hearing relevant to this action will be held in Room 102, Consumer Affairs Building, 1020 N Street, Sacramento, California, at 2:00 p.m., on Monday, August 19, 1985. Any person interested may present statements or arguments orally or in writing at that time and place.

INFORMATIVE DIGEST: Current law requires that the county assessor (1) appraise newly constructed property at its full cash value on the date the new construction is completed and (2) place a supplementary assessment on the supplemental roll for the new construction. (Revenue and Taxation Code Sections 75.10 and 75.11.) Chapter 946 of the Statutes of 1984 (AB 2345, Hannigan), effective 9/10/84, added Section 75.12 to the Revenue and Taxation Code. It prescribes when new construction shall be deemed to be completed for purposes of Sections 75.10 and 75.11. Proposed Rule 463.5 defines "date of completion of new construction" in accordance with Section 75.12. It also defines various other terms for purposes of determining such completion date.

ESTIMATE OF COST OR SAVINGS: The State Board of Equalization has determined that the proposed change does not impose a mandate on local agencies or school districts. Further, the Board has determined that the change will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Section 2231 of the Revenue and Taxation Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on small businesses.

WRITTEN COMMENTS: Written statements or arguments will be considered by the Board if received by August 19, 1985; they are requested by August 1, 1985. Please send comments to Janice Masterton, Regulation Coordinator, at 1020 N Street, Sacramento, California 95814.

STATEMENT OF REASONS; EXPRESS TERMS; RULEMAKING FILE: The Board has prepared a statement of reasons and a strike-out and underscore version (express terms) of the proposed changes. Both of these documents and all information in which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at Room 128, 1020 N Street, Sacramento, California.

STAFF MEMORANDA AFTER PUBLIC HEARING OR REVISIONS TO PUBLISHED VERSION OF THE REGULATION: In the event there are any staff memoranda included in the rulemaking file after the close of the public hearing, these memoranda will be available to the public upon request from Mrs. Masterton for a period of 15 days after the public hearing.

In the event there are any revisions sufficiently related to the published version of the rule, these revisions will be available to the public from Mrs. Masterton for a period of 15 days before adoption.

Following the hearing, the State Board of Equalization, upon its own motion, or at the request of any interested person, may in accordance with law adopt the changes proposed without further notice.

<u>INQUIRIES</u>	
<u>CONTENT</u>	<u>HEARING</u>
Questions regarding the content of the regulation should be directed to Gordon P. Adelman, Assistant Executive Secretary, Property Taxes, (916) 445-1516, at 1020 N Street, Sacramento, CA 95814.	Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Janice Masterton, Assistant to Executive Secretary, (916) 445-6479, at the same address.

STATE BOARD OF EQUALIZATION

Douglas D. Bell

Douglas D. Bell
Executive Secretary

RULE 463.5

DATE OF COMPLETION OF NEW CONSTRUCTION

(a) APPLICATION. The provisions of this section are applicable only to supplemental assessments levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(b) DATE OF COMPLETION OF NEW CONSTRUCTION. The date of completion of actual physical new construction on the site shall be the earliest of either the date upon which the new construction is available for use by the owner or, if all of the conditions of paragraph (1) are satisfied, the date the property is occupied or used by the owner, or with the owner's consent, after the owner has provided a notice in accordance with paragraph (1).

(1) The date of completion of new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof.

(2) The date of completion of new construction shall be conclusively presumed to be the date upon which the new construction is available for use by the owner if the assessor fails to receive notice as provided in paragraph (1).

(3) New construction is not available for use if, on the date it is otherwise available for use, it cannot be functionally used or occupied. In that case, the property is not available for use until the date that any legal or physical impediment to functional use or occupancy is removed.

.(c) DEFINITIONS.

(1) "Property" means land, improvement(s), fixtures as defined in Section 463 and mobilehome(s) subject to taxation under Part 13 (commencing with Section 5800) of Division 1 of Revenue and Taxation Code.

(2) "New Construction resulting from actual physical new construction" means "new construction" as defined in Section 463. The term includes additions to proven reserves of oil or gas resulting from new discoveries. Changes to proven reserves of oil or gas resulting from changes in the economics of oil or gas production or changes in the extraction techniques through existing or new facilities are not included even though the new facilities (wells, compressors, etc) are included in new construction and are assessable.

Example: Actual physical new construction includes grading a site, excavating a sump, and drilling a well. It does not include activities, such as seismic testing for mineral deposits, which do not cause any substantial physical alteration of the land.

"New construction resulting from actual physical new construction" also includes: (A) the installation of a new fixture which is an addition or is a replacement of an existing fixture; (B) the rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture; or (C) the severance of structures, fixtures or other improvements which is associated with new construction.

"New construction resulting from actual physical new construction" does not include: (A) the severance of structures, fixtures, or other improvements which are not associated with any new construction; or (B) the discontinued use of structures, fixtures or other improvements which are are not physically severed from the real property but which are made redundant by newly installed or erected structures, fixtures, or other improvements.

Examples: (A) The installation of a multi-level printing press as an addition to existing facilities constitutes actual physical new construction.

(B) The installation of a printing press as the replacement of an existing press is also actual physical new construction.

(C) The complete renovation of an existing press to the substantial equivalent of a new press constitutes actual physical new construction.

(D) The severance of the old press is actual physical new construction only if it is associated with the installation of the new press or other new construction.

(3) "Commencement of construction" means the performance of physical activities on the property which results in changes which are visible to any person inspecting the site and are recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures. Such activities include clearing and grading land, layout of foundations, excavation of foundation footing, fencing the site, or installation of temporary structures. Such activities also include the severance of existing improvements or fixtures when the commencement of replacement construction will follow timely as part of a continuous project.

"Commencement of construction" does not include activities preparatory to actual construction such as obtaining architect services, preparing plans and specifications, obtaining building permits or zoning variances or filing subdivision maps or environmental impact reports.

"Commencement of construction" shall be determined solely on the basis of activities which occur and are apparent on the property undergoing new construction. Where several parcels are adjacent and will be treated as a single parcel for purposes of the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit. Where a property has been subdivided into separate lots, however, the commencement of construction shall be determined on the basis of the activities occurring on each separate lot.

(4) "Available for use by the owner" means that the property, or the portions thereof on which construction is completed, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations, or in the case of fixtures, when all testing of machinery or equipment is completed (if such testing is necessary for proper operation or safety prior to acceptance by the owner).

In the case of physical alterations to land, such as leveling, "available for use" means that point in time when the land is ready for use by the owner and no further new construction is required for the new use. If a structure is constructed with the expectation that the tenant(s) will have improvements added after a lease(s) is executed, "available for use" means that point in time when the structure is ready to receive tenant improvements, whether or not there are any tenants at that time and regardless of who is to construct the improvements. In the case of fixtures added as part of a larger new construction project, "available for use" means that point in time when the project, including the fixture, is ready for use.

(5) "Occupied or used" means the physical occupancy of the property by the owner or any physical use of the property by the owner, except where such occupancy or use is incidental to an offer for a change of ownership. "Occupied or used" also includes the rental or lease of the property or any occupancy or use of the property by third persons with the owner's consent. The occupancy or use of the property occurs on the earliest date when the property is physically occupied or when the agreed upon term of occupancy commences. "Used" does not include the transfer of legal title to the property as security.

(6) "Functionally used or occupied" means that the property is or can be used or occupied for the purpose for which it was constructed. The purpose for which the property was constructed or improved shall be determined on the basis of the type of property and any special facts or circumstances which affect its use or occupancy. Property shall not be considered "functionally used or occupied" if any legal restriction or physical impediment beyond the owners' control prevents the use of the property for the purpose intended.

Examples: (A) A building intended for use as a warehouse can be functionally used when physical construction is completed even though the property to be stored has not arrived at the site.

(B) Land improved by leveling and the installation of an irrigation system which converts it from grazing land to farm land can be functionally used when the improvement activity is completed even though the planting season will not commence for several months.

(C) An office or hotel building on which construction is completed cannot be functionally used if it is uninhabitable because of the lack of power, water or sewer service, or if a natural disaster, such as a flood or earth slide, prevents reasonable public access to the facility. .

(7) "Owner's consent" means the express or implied agreement of an owner to allow the property, or a portion thereof, to be physically occupied or used by a third person. Where the use or occupancy is obvious, it shall be rebuttably presumed that the property is occupied or used with the owner's consent. If the owner has received actual or constructive notice of the occupancy or use, failure of the owner to object or enforce his rights to remove the occupant within a reasonable time shall be evidence of consent.

(8) "Incidental to an offer for a change of ownership" means that an activity is usual or necessary to the holding of property for sale in the regular course of business. It includes any use or occupancy arising from the demonstration or display of the property for the purpose of selling that property or other property in the vicinity under the same ownership. It includes use of the property by the owner or by any person using the property with the owner's consent. Use of property as a model home, a sales office, or as a temporary storage facility for building materials or furnishings intended to be installed in other property to be held for sale, shall be considered to be incidental to an offer for a change in ownership. Temporary use of the property as lodging by a potential buyer for the purpose of sales promotion shall be considered incidental to an offer for a change of ownership. The use of this property, however, by a potential buyer as a principal residence pending the arrangement or approval of the financing necessary to complete the purchase is not incidental to an offer for a change in ownership.

Reference: Section 75.12, Revenue and Taxation Code.
Authority: Section 15606, Government Code; Section 75.12,
subdivision (c), Revenue and Taxation Code.